IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY THIRD DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No: 5819 of 2005

Between:

1 State of A.P., rep. by its Secretary to Govt., Higher Education Department (CE.I) Department,
Secretariat, Hyderabad-22.
2 The Commissioner of Collegiate Education,
A.P., Hyderabad-500001.

..... PETITIONERS

AND

1 Sri A. Lingaiah, Junior Lecturer in Economics,
Pingle Govt. Junior College for Girls,
Hanmakonda, Warangal.
2 Sri S. Nagulaiah, Govt Junior College, Madhira,
Khammam District.
3 Sri A. Prabhakar Rao, Govt Junior College, Jangaon, Warngal District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ or direction more particularly one in the nature of Writ of

Certiorari, calling for the records connected with order dt. 4.10.2004 in O.A.No.886/2000 on the file of the Hon'ble A.P.A.T., Hyderabad and quash the same as illegal and erroneous and pass such order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioners: GP FOR SERVICES I

Counsel for the Respondent No.1: MR.J.R.MANOHAR RAO (CAVEATOR)

The Court made the following:

ORAL ORDER:- (PER GB,J.)

The Writ Petition is filed by the Government assailing the order, dated 14.09.2004, passed by the A.P. Administrative Tribunal in O.A.No.886 of 2000.

2. The 1st respondent herein filed O.A. before the Tribunal challenging the

proceedings Rc.No.259/GCV-1/98, dated 17.03.1999, issued by the 2nd respondent-The Commissioner of Collegiate Education, Hyderabad, and for consequential direction for promotion to the post of Lecturer in Degree Colleges in accordance with the rules.

3. The Tribunal, after considering the matter, observed as follows:

> "On a careful consideration of the rule position and the material on record, it is seen that a person with M.Phil has to be preferred to a person who does not possess such a qualification for promotion as lecturer in Degree Colleges. It appears the unofficial respondents 4 and 5 were given promotion ignoring this rule on the ground that they are seniors. When persons with higher qualifications are available, the vacancies should be filled up with those persons and only when persons with M.Phil qualifications are not available, then only the cases of persons who do not possess such qualifications can be considered. In the circumstances, the case of the applicant and others who possess M.Phil qualifications should be considered if necessary by demoting persons who are promoted without possessing the M.Phil qualifications including the unofficial respondents 4 and 5. Necessary action should be taken within a period of three months from the date of receipt of copy of this order and notional benefits be given up to the date of filing this O.A. and monetary benefits thereafter. The O.A. is accordingly disposed of. No costs."

Against the said order, the present Writ Petition has been filed.

4. Learned Government Pleader for the petitioners submits that as per the rules, the respondents are not eligible to be appointed as they did not fulfill the criteria laid down in G.O.Ms.No.378, Education (HE.1) Department, dated 21.11.1991, and therefore, the order of the Tribunal is liable to be set aside.

5. Learned counsel for the respondents submits that the G.O.Ms.No.378 contains only executive instructions and therefore it cannot have any effect as over riding the statutory rules, inasmuch as the statutory rules are not amended, and the question of taking action under G.O.Ms.No.50, dated 23.1.1986 does not arise.

6. We agree with the contention raised by the learned counsel for the respondents.

7. We do not find any ground to interfere with the order of the Tribunal and accordingly, the Writ Petition is dismissed. No costs.

_____

G. BIKSHAPATHY, J

_____

P.S. NARAYANA, J

Date: 23.03.2005

ES

To

1 The Secretary to Government, State of A.P.,
Higher Education Department (CE.I) Department,
Secretariat, Hyderabad-22.
2 The Commissioner of Collegiate Education,
A.P., Hyderabad-500001.

3 2 CCs to the G.P. for Services-I, High Court of A.P., Hyderabad (OUT)

4 2 CD copies